

Senate Bill No. 559

CHAPTER 555

An act to amend Section 62 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 12, 2007. Filed with
Secretary of State October 12, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

SB 559, Kehoe. Property taxation: change in ownership: exclusion.

(1) The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property. For purposes of this limitation, "full cash value" is defined as the assessor's valuation of real property as shown on the 1975–76 tax bill under "full cash value" or, thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. Beginning on January 1, 2006, existing law excludes from the definition of "change in ownership" transfers of real property between registered domestic partners.

This bill would also exclude from the definition of "change in ownership" any transfer of property between registered domestic partners that occurred between January 1, 2000, and January 1, 2006. This bill would require the assessor to reverse any reassessment for property that was transferred between these parties during this time period, but only if the transferee submits an application for reversal of that reassessment on or before June 30, 2009, as specified. This bill would authorize a county to charge a fee for these reassessment reversals, as provided. This bill would require the State Board of Equalization to prepare a form for these requests, as specified. Any reassessment reversal would apply commencing with the lien date of the assessment year in which the claim is filed. By requiring county assessors to reverse a reassessment for this property, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) Section 2229 of the Revenue and Taxation Code requires the Legislature to reimburse local agencies annually for certain property tax revenues lost as a result of any exemption or classification of property for purposes of ad valorem property taxation.

This bill would provide that, notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made and the state shall not

reimburse local agencies for property tax revenues lost by them pursuant to the bill.

(4) This bill would take effect immediately as a tax levy.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) It is the intent of the Legislature in enacting this act to guarantee equality for all Californians, regardless of gender or sexual orientation, and to further the state's interests in protecting Californians from the potentially severe economic consequences of abandonment, separation, the death of a partner, and other life crises.

(b) To this end, the Legislature has enacted various statutes in an attempt to move California closer to fulfilling the promises of inalienable rights, liberty, and equality contained in Sections 1 and 7 of Article I of the California Constitution.

(c) For example, in 1999, the Legislature enacted Chapter 588 of the Statutes of 1999, effective January 1, 2000, which established a state registry of domestic partnerships. In 2002, the Legislature enacted Chapter 447 of the Statutes of 2002, effective July 1, 2003, which granted registered domestic partners the same intestate succession rights with respect to separate property as spouses. In 2003, the Legislature enacted Chapter 421 of the Statutes of 2003, effective January 1, 2005, which extended to registered domestic partners nearly all of the rights and responsibilities of spouses under state law that had not been provided by prior domestic partner legislation. And, in 2005, the Legislature enacted Chapter 416 of the Statutes of 2005, which amended Section 62 of the Revenue and Taxation Code concerning valuation and taxation of real property, to exclude property transfers between registered domestic partners from the definition of "change in ownership" for purposes of property tax reassessment. The Legislature has intended a liberal reading of these laws and this act builds upon this existing framework.

(d) Although it intended to protect family members during life crises and to reduce discrimination on the bases of sex and sexual orientation in a manner consistent with the California Constitution, Chapter 417 of the Statutes of 2005 did not expressly exempt transfers from one registered domestic partner to the other registered domestic partner that resulted from the death of a partner prior to January 1, 2006.

(e) Protection against reassessment of family owned real property and resulting increases in property taxes can be a critical bulwark against financial hardship and the loss of the family home or business when a family member dies or a family relationship ends in divorce or dissolution of a domestic partnership. The same is true for domestic partners whose relationships predated California's protective legislation. Many domestic partners whose property was reassessed due to the death of one partner or the dissolution of the domestic partnership have been forced by the resulting

increase in property taxes to sell the family home. Those domestic partners who have retained ownership and have been paying increased property taxes are being treated unequally in a manner inconsistent with the goal of the domestic partnership laws.

(f) Many lesbian, gay, and bisexual Californians continue to face economic discrimination, despite forming lasting, committed, and caring relationships with persons of the same sex according to the laws of this state. These couples build lives together, as do spouses, by purchasing property and creating and operating family businesses. Expanding the rights of domestic partners with respect to property ownership would further California's compelling interests in promoting family relationships and protecting family members during life crises, and would reduce discrimination on the bases of sex and sexual orientation in a manner warranted by the California Constitution.

(g) Therefore, the Legislature finds and declares that this act serves a public purpose of the state.

SEC. 2. Section 62 of the Revenue and Taxation Code is amended to read:

62. Change in ownership shall not include:

(a) (1) Any transfer between coowners that results in a change in the method of holding title to the real property transferred without changing the proportional interests of the coowners in that real property, such as a partition of a tenancy in common.

(2) Any transfer between an individual or individuals and a legal entity or between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy, that results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer. The provisions of this paragraph shall not apply to transfers also excluded from change in ownership under the provisions of subdivision (b) of Section 64.

(b) Any transfer for the purpose of perfecting title to the property.

(c) (1) The creation, assignment, termination, or reconveyance of a security interest; or (2) the substitution of a trustee under a security instrument.

(d) Any transfer by the trustor, or by the trustor's spouse or registered domestic partner, or by both, into a trust for so long as (1) the transferor is the present beneficiary of the trust, or (2) the trust is revocable; or any transfer by a trustee of such a trust described in either clause (1) or (2) back to the trustor; or, any creation or termination of a trust in which the trustor retains the reversion and in which the interest of others does not exceed 12 years duration.

(e) Any transfer by an instrument whose terms reserve to the transferor an estate for years or an estate for life. However, the termination of such an estate for years or estate for life shall constitute a change in ownership, except as provided in subdivision (d) and in Section 63.

(f) The creation or transfer of a joint tenancy interest if the transferor, after the creation or transfer, is one of the joint tenants as provided in subdivision (b) of Section 65.

(g) Any transfer of a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of 35 years or more. For the purpose of this subdivision, for 1979–80 and each year thereafter, it shall be conclusively presumed that all homes eligible for the homeowners' exemption, other than manufactured homes located on rented or leased land and subject to taxation pursuant to Part 13 (commencing with Section 5800) and floating homes subject to taxation pursuant to Section 229, that are on leased land have a renewal option of at least 35 years on the lease of that land, whether or not in fact that renewal option exists in any contract or agreement.

(h) Any purchase, redemption, or other transfer of the shares or units of participation of a group trust, pooled fund, common trust fund, or other collective investment fund established by a financial institution.

(i) Any transfer of stock or membership certificate in a housing cooperative that was financed under one mortgage, provided that mortgage was insured under Section 213, 221(d)(3), 221(d)(4), or 236 of the National Housing Act, as amended, or that housing cooperative was financed or assisted pursuant to Section 514, 515, or 516 of the Housing Act of 1949 or Section 202 of the Housing Act of 1959, or the housing cooperative was financed by a direct loan from the California Housing Finance Agency, and provided that the regulatory and occupancy agreements were approved by the governmental lender or insurer, and provided that the transfer is to the housing cooperative or to a person or family qualifying for purchase by reason of limited income. Any subsequent transfer from the housing cooperative to a person or family not eligible for state or federal assistance in reduction of monthly carrying charges or interest reduction assistance by reason of the income level of that person or family shall constitute a change of ownership.

(j) Any transfer during the period March 1, 1975, to March 1, 1981, between coowners in any property that was held by them as coowners for all or part of that period, and which was eligible for a homeowner's exemption during the period of the coownership, notwithstanding any other provision of this chapter. Any transferee whose interest was revalued in contravention of the provisions of this subdivision shall obtain a reversal of that revaluation with respect to the 1980–81 assessment year and thereafter, upon application to the county assessor of the county in which the property is located filed on or before March 26, 1982. No refunds shall be made under this subdivision for any assessment year prior to the 1980–81 fiscal year.

(k) Any transfer of property or an interest therein between a corporation sole, a religious corporation, a public benefit corporation, and a holding corporation as defined in Section 23701h holding title for the benefit of any of these corporations, or any combination thereof (including any transfer from one entity to the same type of entity), provided that both the transferee

and transferor are regulated by laws, rules, regulations, or canons of the same religious denomination.

(l) Any transfer, that would otherwise be a transfer subject to reappraisal under this chapter, between or among the same parties for the purpose of correcting or reforming a deed to express the true intentions of the parties, provided that the original relationship between the grantor and grantee is not changed.

(m) Any intrafamily transfer of an eligible dwelling unit from a parent or parents or legal guardian or guardians to a minor child or children or between or among minor siblings as a result of a court order or judicial decree due to the death of the parent or parents. As used in this subdivision, “eligible dwelling unit” means the dwelling unit that was the principal place of residence of the minor child or children prior to the transfer and remains the principal place of residence of the minor child or children after the transfer.

(n) Any transfer of an eligible dwelling unit, whether by will, devise, or inheritance, from a parent or parents to a child or children, or from a guardian or guardians to a ward or wards, if the child, children, ward, or wards have been disabled, as provided in subdivision (e) of Section 12304 of the Welfare and Institutions Code, for at least five years preceding the transfer and if the child, children, ward, or wards have adjusted gross income that, when combined with the adjusted gross income of a spouse or spouses, parent or parents, and child or children, does not exceed twenty thousand dollars (\$20,000) in the year in which the transfer occurs. As used in this subdivision, “child” or “ward” includes a minor or an adult. As used in this subdivision, “eligible dwelling unit” means the dwelling unit that was the principal place of residence of the child or children, or ward or wards for at least five years preceding the transfer and remains the principal place of residence of the child or children, or ward or wards after the transfer. Any transferee whose property was reassessed in contravention of the provisions of this subdivision for the 1984–85 assessment year shall obtain a reversal of that reassessment upon application to the county assessor of the county in which the property is located. Application by the transferee shall be made to the assessor no later than 30 days after the later of either the transferee’s receipt of notice of reassessment pursuant to Section 75.31 or the end of the 1984–85 fiscal year.

(o) Any transfer of a possessory interest in tax-exempt real property subject to a sublease with a remaining term, including renewal options, that exceeds half the length of the remaining term of the leasehold, including renewal options.

(p) (1) Commencing on January 1, 2000, any transfer between registered domestic partners, as defined in Section 297 of the Family Code, including, but not limited to:

(A) Transfers to a trustee for the beneficial use of a registered domestic partner, or the surviving registered domestic partner of a deceased transferor, or by a trustee of such a trust to the registered domestic partner of the trustor.

(B) Transfers that take effect upon the death of a registered domestic partner.

(C) Transfers to a registered domestic partner or former registered domestic partner in connection with a property settlement agreement or decree of dissolution of a registered domestic partnership or legal separation.

(D) The creation, transfer, or termination, solely between registered domestic partners, of any coowner's interest.

(E) The distribution of a legal entity's property to a registered domestic partner or former registered domestic partner in exchange for the interest of the registered domestic partner in the legal entity in connection with a property settlement agreement or a decree of dissolution of a registered domestic partnership or legal separation.

(2) Any transferee whose property was reassessed in contravention of the provisions of this subdivision for a transfer occurring between January 1, 2000, and January 1, 2006, shall obtain a reversal of that reassessment upon application to the county assessor of the county in which the property is located. Application by the transferee shall be made to the assessor no later than June 30, 2009. A county may charge a fee for its costs related to the application and reassessment reversal in an amount that does not exceed the actual costs incurred. This paragraph shall be liberally construed to provide the benefits of this subdivision and Article XIII A of the California Constitution to registered domestic partners.

(A) After consultation with the California Assessors' Association, the State Board of Equalization shall prescribe the form for claiming the reassessment reversal described in paragraph (2). The claim form shall be entitled "Claim for Reassessment Reversal for Registered Domestic Partners." The claim shall state on its face that a "certificate of registered domestic partnership" is available upon request from the California Secretary of State.

(B) The information on the claim shall include a description of the property, the parties to the transfer of interest in the property, the date of the transfer of interest in the property, and a statement that the transferee registered domestic partner and the transferor registered domestic partner were, on the date of transfer, in a registered domestic partnership as defined in Section 297 of the Family Code.

(C) The claimant shall declare that the information provided on the form is true, correct, and complete to the best of his or her knowledge and belief.

(D) The claimant shall provide with the completed claim the "Certificate of Registered Domestic Partnership," or photocopy thereof, naming the transferee and transferor as registered domestic partners and reflecting the creation of the registered domestic partnership on a date prior to, or concurrent with, the date of the transfer for which a reassessment reversal is requested.

(E) Any reassessment reversal granted pursuant to a claim shall apply commencing with the lien date of the assessment year, as defined in Section 118, in which the claim is filed. No refunds shall be made under this paragraph for any prior assessment year.

(F) Under any reassessment reversal granted pursuant to that claim, the adjusted full cash value of the subject real property in the assessment year described in subparagraph (E) shall be the adjusted base year value of the subject real property in the assessment year in which the excluded purchase or transfer took place, factored to the assessment year described in subparagraph (E) for both of the following:

(i) Inflation as annually determined in accordance with paragraph (1) of subdivision (a) of Section 51.

(ii) Any subsequent new construction occurring with respect to the subject real property.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 4. Notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any property tax revenues lost by it pursuant to this act.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.